IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO. 11 OF 2006

State of Maharashtra, through
Metropolitan Magistrate, 26th
Court, Borivali, Mumbai. .. Petitioner.

V/s.

Uttam Damodar Kadlag & Anr. .. Respondents.

Ms. P.H.Kantharia, APP for the Petitioner.

Mr.Jagdish Choudhari i/by S.P.Kadam for the Respondent No.1.

Mr.S.L.Prabhu for the Respondent No.2.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 21st APRIL, 2007.

P.C.:

. This is a reference by the Chief Metropolitan Magistrate, Esplanade Court, Mumbai, alleging criminal contempt on the part of the Respondent Nos. 1 and 2. The criminal contempt, it is urged, is based on the fact that a learned Judge of this court in Criminal Application No. 389 of 2003 on 22nd August, 2003, whilst making Rule returnable in eight weeks, was pleased to grant ad-interim relief in terms of prayer clause (c) which reads as under :

"(c) pending the hearing and final disposal of the above application, the investigation carried out by the Sr. Inspector of Police, Kandivali (W) Police Station in case No.68/Misc/02 may kindly be stayed;."

2. It is alleged, insofar as respondent No.2 - contemnor is concerned that she had moved the Magistrate concerned inspite of the investigation being stayed to club the matter alongwith the other criminal matters, which were filed against the accused in those cases. This clubing, it is contended, amounts to criminal contempt. We fail to understand how that can be sound in any contempt. All that the contemnor No.2 did was to move the court to exercise its powers to club the matters together. We find no case of criminal contempt against the contemnor No.2.

3. Insofar as the respondent No.1 - contemnor is concerned, the language of the interim relief order was that the investigation carried out be stayed. In other words, if the language is strictly construed, that at the highest it indicates that investigation already done be stayed. We find, from the nature of the controversy that at the highest it may sound in civil contempt for

breach of the order of this court. The prayer clause prima facie was not to stay further investigation but investigation already carried out. The contemnor No.1 has filed a reply, pointing out that he had completed the investigation much earlier to the said order. However, on behalf of the State, the learned APP points out that in the investigation it was recorded that the contemnor No.1 had carried out investigation much after the order of the stay.

4. Even if that be so, it is open for the aggrieved party to move the learned Judge, who is seized of the matter for initiation of an appropriate proceedings as at the highest, it would amount to breach of the order of this court and it will not sound in a criminal contempt court.

5. The reference is disposed of with the above observation.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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